

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL NO. 03-12560-RGS

DAVID DIETZEL

v.

SPRINGFIELD TERMINAL RAILWAY COMPANY

MEMORANDUM AND ORDER ON DEFENDANT'S MOTION FOR A NEW TRIAL
PURSUANT TO FED. R. CIV. P. 59(a), AND TO ALTER OR
AMEND JUDGMENT AND FOR A REMITTUR,
PURSUANT TO FED. R. CIV. P. 59(e)

November 8, 2006

STEARNS, D.J.

The motion for a new trial pursuant to Fed. R. Civ. P. 59(a) is DENIED. The court cannot say that “the outcome is against the clear weight of the evidence such that upholding the verdict will result in a miscarriage of justice.” Ramos v. Davis & Geck, Inc., 167 F.3d 727, 731 (1st Cir. 1999), quoting Velazques v. Figueroa-Gomez, 996 F.2d 415, 427 (1st Cir. 1993). The motion to alter or amend the Judgment is DENIED.

Rule 59(e) motions are aimed at reconsideration, not initial consideration. Motions under Rule 59(e) must clearly establish a manifest error of law or present newly discovered evidence. They may not be used to argue a new legal theory.

Federal Deposit Ins. Corp. v. World Univ., Inc., 978 F.2d 10, 16 (1st Cir. 1992). Defendant's motion touches neither of the permissible bases. Finally, the motion for a remittur is DENIED. Remittitur is appropriate only when a verdict is “grossly excessive, inordinate, shocking to the conscience of the courts, or so high that it would be a denial of justice to permit it to stand.” Correa v. Hospital San Francisco, 69 F.3d 1184, 1197 (1st

Cir. 1995), quoting Gruenthal v. Long Island R.R. Co., 393 U.S. 156, 159 n.4 (1968). While the jury's award was generous, there is nothing shocking about the amount, particularly when the downward adjustment of the gross award required by the jury's finding on comparative negligence is taken into account.¹

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

¹The court also notes that defendant's argument fails to make any allowance for hedonic damages as a component of the verdict.